

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
Office of the Clerk**

INSTRUCTIONS CONCERNING SETTLEMENT CONFERENCES

CONDUCTED BY UNITED STATES MAGISTRATE JUDGE S. THOMAS ANDERSON

I. SETTLEMENT CONFERENCE PREPARATION

Over 95% of all civil suits settle prior to trial. Therefore, settlement preparation should be treated as seriously as trial preparation. Planning is essential because the party who is best prepared obtains the best result. The Court has found that the following steps are essential to a successful settlement conference.

II. LEAD ATTORNEY MUST APPEAR

Unless excused by Order of the Court, the lead attorney who will try the case for each party shall appear, and it is expected that counsel will be fully authorized to accomplish settlement of this case and prepared to engage in effective settlement negotiations.

**III. PARTIES/REPRESENTATIVES MUST APPEAR IN PERSON
WITH FULL SETTLEMENT AUTHORITY**

The parties or representatives of corporate parties, **WITH FULL SETTLEMENT AUTHORITY**, must be present **IN PERSON** at the conference. This provision requires the presence of the client or if a corporate, governmental, or other organizational entity, a representative of the client who has both full settlement authority and the realistic freedom to exercise it without negative consequences. Any insurance company that is contractually required to defend or to pay damages or which has a subrogation interest must also have a fully

authorized settlement representative present. “Full settlement authority” means:

(a) for a defendant, the representative must have authority, in the representative’s own discretion, to pay a settlement amount up to plaintiff’s last prayer, or up to plaintiff’s last demand, whichever is lower; (b) for a plaintiff, such representative must have final authority, in the representative’s own discretion, to authorize dismissal of the case with prejudice, or to accept a settlement amount down to defendant’s last offer; (c) for a client that is controlled by a group, like a board of directors of a claims committee, the representative must have the authority to settle for the group as described above; (d) for an insurance company with a defense or indemnity obligation, the representative must have final settlement authority to commit the company to pay, in the representative’s own discretion, an amount up to the plaintiff’s last demand if within policy limits, or if not within policy limits, the limits of the policy; (e) for an insurance company with a subrogation interest in the recovery of a party, the representative must have final settlement authority to commit the company to settle, in the representative’s own discretion, by dismissal of the interest with prejudice, or to accept a settlement amount down to the insured’s last offer.

(b) Having a client with authority available by telephone is not an acceptable alternative, except under the most extenuating circumstances. Because the Court generally sets aside several hours for each conference, it is impossible for a party who is not present to appreciate the process and the reasons which may justify a change in one’s perspective towards settlement. Counsel appearing for the settlement conference without their client representatives or insurance company representatives, authorized as described above, will cause the settlement conference to be canceled or rescheduled. The non-complying party, attorney, or both may be assessed the costs and expenses incurred by other parties and the Court as a result of the

cancellation, as well as any additional sanctions that the Court feels are appropriate.

IV. MEDIATION FORMAT

A settlement conference is more likely to be productive if, before the conference, the parties have had a written exchange of their settlement proposals. Accordingly, **at least fourteen (14) days prior to the settlement conference, Plaintiff's counsel** shall submit a written itemization of damages and settlement demand to Defendant's counsel with a brief explanation of why such a settlement is appropriate. **No later than seven (7) days prior to the settlement conference, Defendant's counsel** shall submit a written offer to Plaintiff's counsel with a brief explanation of why such a settlement is appropriate. On occasion, this process will lead directly to a settlement. If settlement is not achieved, Plaintiff's counsel shall deliver or fax copies of these letters to Judge Anderson's Jackson chambers **no later than three (3) business days** before the conference. Do not file copies of these letters in the Clerk's Office.

V. ISSUES TO BE DISCUSSED AT SETTLEMENT CONFERENCE

Parties should be prepared to discuss the following at the settlement conference:

1. What are your objectives in the litigation?
2. What issues (in and outside of this lawsuit) need to be resolved? What are the strengths and weaknesses of your case?
3. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?
4. What are the points of agreement and disagreement between the parties?
Factual? Legal?
5. What are the impediments to settlement?
6. What remedies are available through litigation or otherwise?
7. Are there possibilities for a creative resolution of the dispute?
8. Do you have adequate information to discuss settlement? If not, how will you

obtain sufficient information to make a meaningful settlement discussion possible?

9. Are there outstanding liens? Do we need to include a representative of the lienholder?

VI. OTHER RELEVANT INFORMATION

All participants should allocate adequate time for the settlement conference. Although the settlement conference may conclude in the early afternoon, all participants should clear their calendars for the entire day through 5:30 p.m. Judge Anderson's commitment is to work with the parties for as long as necessary.

Statements made by any party during the settlement conference relating to the substance or merits of the case shall be deemed to be confidential and will not be admissible at trial. Parties are encouraged to be frank and open in their discussions. This provision does not preclude admissibility in other contexts, such as pertaining to a motion for sanctions regarding the settlement.

IT IS SO ORDERED.

**S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE**

Date: